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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,528	03/01/2004	Mark Dickstein	REL-8403	3371

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EXAMINER

HUYNH, KHOA D

ART UNIT PAPER NUMBER

3751

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/791,528	Applicant(s) DICKSTEIN, MARK	
	Examiner Khoa D. Huynh	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/01/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the roughed surface as recited in claim 10, the fabric layer defining the interior side as recited in claim 31 and the imprinted fabric layer as recited in claim 32 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. The drawings are also objected to under 37 CFR 1.83(a) because they fail to show the texture or roughed top surface as described in the specification on page 10. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).
3. The drawings are also objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "4" has been used to designate both the sponge layer and the mat as disclosed on page 10.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 7, 8-10, 16, 18, 19, 25, 28, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Spier (3133292).

Regarding claims 1 and 2, the Spier reference discloses a liner assembly for a bathtub (12) having a drain (44). The liner assembly includes a liner (33) having an exterior side, an interior side, a bottom and sidewalls. As schematically shown in Figure 3, the line is being removably disposed in the bathtub and at least partially following the contour of the bathtub. The liner assembly also includes a fastener (42) attached to the exterior side of the line for securing the liner to the bathtub. The liner is being removed from the bathtub by disengaging the fastener from the bathtub (col. 2, lines 43-45).

Regarding claim 7, the bottom layer of the liner (33) is formed of a water impervious material (col. 2, lines 29-30).

Regarding claim 8, the liner is formed of a water impervious material (col. 2, lines 29-30) defining the exterior side of the liner and a foam layer or mat (40) disposed on at least part of the water impervious material defining the bottom (Fig. 2).

Regarding claim 9, as schematically shown in Figure 3, the mat is fully enclosed in a sandwich type format between the water impervious layer (36) and the tub wall.

Regarding claim 10, the water impervious surface has a roughed surface (38) for providing anti-slippage properties.

Regarding claim 16, the liner further includes a surface with decorative pattern (col. 2, lines 26-29).

Regarding claim 18, the sidewalls are also formed from the water impervious material (Fig. 3) but do not include the mat.

Regarding claim 19, the water impervious material is a plastic (col. 2, lines 19-26) and the mat is formed of a foam rubber or sponge material (col. 2, line 20-22 and 35-40).

Claim 25 recites limitations that are substantially similar to claim 1 which has been rejected as discussed supra.

Regarding claim 28, the liner has a hole (45) formed therein functioning as a drain.

Regarding claim 31 and 32, the liner is formed of a water resistance layer (36) defining the exterior side and a fabric layer defining the interior side, wherein the fabric layer is an imprinted fabric layer (col. 2, lines 23-35).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-6, 17, 20, 21, 23, 24, 26, 27, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spier (as discussed supra) in view of Henry (2319603).

Regarding claim 3, the Spier reference DIFFERS in that it does not specifically disclose that the adhesive having an adhesive cover as claimed. Attention, however, is directed to the Henry reference which discloses a liner (7) for a bathtub. The liner includes an adhesive strip (at 8-10 or 24-27) having a cover (at 11), wherein at the time of applying the liner to the bathtub, the cover is pulled away from the tacky surface of the adhesive and the liner can be adhesively connected to the bathtub. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Spier reference by employing a cover for the adhesive, in view of the teaching of Henry, in order to maintain the adhesive in a tacky condition and protect the adhesive from dirt until time for installing the liner.

Regarding claims 4 and 5, the adhesive is in a form of adhesive strips or patches disposed spaced apart on the exterior side of the liner (in Spier, Fig. 2, elements 42; in Henry, elements 8-10 or 24-27).

Regarding claim 6, the Henry reference also discloses that the adhesive strips extend beyond the liner for attachment to the bathtub (page 1, left col., lines 49-54).

Regarding claim 17, the modified Spier reference DIFFERS in that it does not specifically disclose a surface with animal shapes as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to emboss such surface with animal shapes since it is well within the general skill of a worker in the art to select a preferred interactive surface with picture of animal or cartoon characters on the basis of its suitability for its intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claims 20 and 21, the modified Spier reference DIFFERS in that it does not specifically disclose that the liner is less than 1/32 and 1/64 inches thick as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such thickness for the liner since discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 23, the modified Spier reference DIFFERS in that it does not specifically disclose that the liner is coated with a material as claimed. It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to coat the liner with a material such as a scent because it is well within the general skill of a worker in the art to select a preferred enjoyable scent on the basis of its suitability for its intended use as a matter of obvious design choice.

Claim 24 recites limitations similar to claims 1 and 3 which have been rejected as discussed supra.

Regarding claim 26, the modified Spier reference DIFFERS in that it does not specifically disclose that the liner has a rectangular shape as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize such shape for a liner because it is well within the general skill of a worker in the art to select a preferred shape on the basis of its suitability for its intended use as a matter of obvious design choice especially since a) applicant does not disclose any specific advantage of why the liner has to be have a rectangular shape and b) Spier does disclose that the liner can be of any shape and size in accordance with the needs of the user.

Regarding claim 27, the modified Spier reference DIFFERS in that it does not specifically disclose that the sidewalls of the liner is less than 2 inches high as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such dimension for the sidewalls of the liner since discovering an optimum value for high of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claims 29 and 30 recite limitations similar to claims 3 and 4 which have been rejected as discussed supra.

8. Claims 11-13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spier (as discussed supra) in view of Bleicher (5465436).

Regarding claim 11, the Spier liner also includes a hole (45) formed therein in the area of the drain (at 44). The Spier reference DIFFERS in that it does not specifically include a drain cover as claimed. Attention, however, is directed to the Bleicher reference which discloses another liner (10) for a bathtub. The liner includes a drain hole (32) and a drain cover (36). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Spier reference by employing a drain cover for the drain hole of the liner, in view of the teaching of Bleicher, so that water can be hold in the liner for bathing purposes.

Regarding claims 12, 13 and 22, the Spier reference also DIFFERS in that it does not specifically include a ripcord disposed around the hole as claimed. Attention, however, is also directed to the Bleicher reference which discloses a ripcord (40) connected to the drain cover and disposed around the circumference of the hole (Fig. 7A, 7B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Spier reference by employing a ripcord, in view of the teaching of Bleicher, in order to allow the user to open the drain hole to drain water without coming into contact with the used water in the bathtub.

9. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spier (as discussed supra) in view of Lotis (4047259).

Regarding claims 14 and 15, the Spier reference DIFFERS in that it does not specifically include a dispenser as claimed. Attention, however, is directed to the Lotis reference which discloses a mat or liner (10) for a bathtub. The mat or liner includes a soap container or dispenser (14) attached to the side of the mat or liner. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Spier reference by employing a dispenser attached to the liner, in view of the teaching of Lotis, to provide a convenient soap dispensing location for the user during bath.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Friedman et al. was cited to show a rectangular shape liner having a drain hole and a drain cover. Williams was cited to show a liner for a shower stall. Parkay et al. was cited to show a bathtub liner having roughed surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh  
Patent Examiner  
Art Unit 3751

HK  
02/18/2005